

In re Appln. of Helen Biddiscombe  
Serial No. 09/763,723  
Reply To Office Action Of June 7, 2005

#### REMARKS

This Amendment is responsive to the Office Action mailed June 7, 2005 wherein the Examiner (a) rejects Claims 2-5, 8-9, 12-13, 15-17, and 20 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement; (b) rejects Claims 21-25 and 29 under 35 U.S.C. § 102(b) as being anticipated by Leatherman et al. (USPN 4,892,779); (c) rejects Claims 2-5, 9, 13, and 15-17 under 35 U.S.C. § 103(a) as being unpatentable over Leatherman et al.; and (d) rejects Claims 8, 12, 20, and 26-27 under 35 U.S.C. § 103(a) as being unpatentable over Leatherman et al. in view of Takagi (USPN 5,078,817). Applicant respectfully submits that in view of the remarks below, each of the pending Claims 2-5, 8, 9, 12, 13, 15-17, 20-27, and 29 are in a condition for allowance and respectfully requests favorable consideration of the application.

The Examiner rejected Claims 2-5, 8-9, 12-13, 15-17, and 20 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. More particularly, the Examiner rejected Claim 13 (from which Claims 2-5, 8-9, 12, 15-17, and 20 depend) stating that a film that is voided and has a density of  $0.8\text{ g/cm}^3$  or more is not supported in the original application. The Examiner points to page 4, second paragraph, of the disclosure as making a distinction between voided films having a density less than  $0.69\text{ g/cm}^3$  and films with densities of  $0.8\text{ g/cm}^3$  or more. The Examiner further states that when the filler is added to polypropylene to make it voided, the density is less than  $0.9\text{ g/cm}^3$  and therefore, the originally filed specification would convey to one of ordinary skill in the art that the density is at most less than  $0.9\text{ g/cm}^3$  and therefore when the density is claimed as having  $0.8\text{ g/cm}^3$  or more, that film is not

In re Appln. of Helen Biddiscombe  
Serial No. 09/763,723  
Reply To Office Action Of June 7, 2005

considered voided. Applicant respectfully disagrees with the Examiner for the reasons discussed below.

Applicant respectfully submits that the Examiner has misconstrued page 4, second paragraph. The specification on page 4 in the second paragraph clearly distinguishes between two different problems which arise with two different types (i.e. different densities) of voided films and contrary to the Examiner's assertions, the statements in the second paragraph of page 4 do not distinguish between voided and nonvoided films. The second paragraph on page 4 starts out that "[I]t is particularly surprising that *both* blistering and orange peel effects can be avoided..." The specification then states "[f]urthermore, this surprising effect is observed both with polyolefin homopolymer based films having densities of not more than 0.69 g/cm<sup>3</sup>, that is voided films; *where orange peel effects having been a problem...*" (emphasis added). The application further continues that "... and with films with densities of 0.8 g/cm<sup>3</sup> or more, *where blister formation tends to occur with prior art films*" (emphasis added). The introduction to the paragraph makes it clear that the paragraph is focusing on the problems typically found in voided films and then specifically states at what densities these problems typically occur. Therefore, contrary to the Examiner's assertions, this paragraph does not differentiate between voided and nonvoided films and therefore does not limit the claiming of voided films to the lower stated density. As one skilled in the art would recognize, the listed problems, orange peel and blistering, are to be avoided by using the present invention for films having densities where these problems commonly occur. The following web site provides more explanation of the terms "orange peel" and "blistering" (<http://www.labelexperts.com/general/glossary.asp>) for the

In re Appln. of Helen Biddiscombe  
Serial No. 09/763,723  
Reply To Office Action Of June 7, 2005

Examiner's reference. Therefore, in summary, instead of differentiating between voided and non-voided film, as suggested by the Examiner, the specification is only differentiating between where problems are most likely to occur **with voided films** and at what densities these problems commonly occur. In view of the above, Applicant respectfully submits that the specification clearly supports a voided film with a density greater than 0.8 g/cm<sup>3</sup> and that the Examiner's rejection of Claim 13 and the claims depending therefrom under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement is overcome. Applicant submits that Claim 13 and the claims depending therefrom are in a condition for allowance.

In regards to the Examiner's statements regarding of paragraph 5, as teaching that when filler is added to polypropylene to make it voided, the density is less than 0.9 g/cm<sup>3</sup> and therefore, the originally filed specification would convey to one having ordinary skill in the art that at most the density of the voided film is less than 0.9 g/cm<sup>3</sup> and that when the film is claimed as having a density of 0.8 g/cm<sup>3</sup> or more, that film is not considered voided, Applicant respectfully disagrees.

Applicant reminds the Examiner that specifications must be read in totality and as a whole and that individual statements cannot be taken in hindsight out of context to support a position. It is important to note that the language from paragraph 5, used by the Examiner to support limiting the density to less than 0.9 g/cm<sup>3</sup>, clearly starts with "**for example...**". Furthermore, as is very well known to one skilled in the art, the density of most polypropylene homopolymers is approximately 0.9 g/cm<sup>3</sup>. An example of a polypropylene homopolymer, such as a polypropylene homopolymer without fillers or pigments would start with a density of 0.9

In re Appln. of Helen Biddiscombe  
Serial No. 09/763,723  
Reply To Office Action Of June 7, 2005

g/cm<sup>3</sup> and would generally have a density less than 0.9 g/cm<sup>3</sup>, **so long as the density and volume of the void creating filler is less than the density of the film, and the volume of the voids created by the void creating filler.** As well known to one skilled in the art, it is easily possible to add a void creating filler to a film, create voids in the film and have the density of the voided film be greater than the original nonvoided film. Also, as well known to one skilled in the art, various fillers, such as pigments (see specification), may be added to the polypropylene homopolymer, which will of course make the density greater than 0.9 g/cm<sup>3</sup> before voiding and therefore a voided film may easily have a density greater than a underlying pure nonvoided film. Therefore, Applicant submits that the Examiner is incorrect in stating that the density of the voided film is at most less than 0.9 g/cm<sup>3</sup>. Applicant respectfully submits that the Examiner's rejection is overcome and should be withdrawn.

In further regard to the Examiner's statements that a film having a density greater than 0.8 g/cm<sup>3</sup> is not considered voided, Applicant respectfully points out, in view of the above arguments, that, as one skilled in the art would well know, as the density increases, eventually, a voided film becomes non-voided. Therefore, Applicant respectfully submits that there is more than enough support and it is very clear to one skilled in the art that the voided film may have a density greater than 0.8 g/cm<sup>3</sup> up to the point where the film would no longer be considered voided by one skilled in the art. This clearly shows that the language in paragraph 5 is an example and was not meant to limit the application to voided films with less than 0.9 g/cm<sup>3</sup>.

The disclosure clearly states, on page four, a density greater than 0.8 g/cm<sup>3</sup> and because it is clear that the film is voided, one skilled in the art would absolutely understand that a

In re Appln. of Helen Biddiscombe  
Serial No. 09/763,723  
Reply To Office Action Of June 7, 2005

polypropylene film may be voided at a density of about 0.8 g/cm<sup>3</sup> and above until the density of the underlying material, or the density of the underlying material plus fillers, becomes such that the film could no longer be considered voided. It is not required that the upper density limit be known, Applicant does know that the present invention solves blistering problems for films with densities above 0.8 g/cm<sup>3</sup>, as claimed in Claim 13. Therefore, because the claim is directed to a "voided film", Applicant respectfully submits if the Examiner wishes for an upper density limit, there is a clear upper density limit at the point where the film could no longer be considered voided and falls outside the scope of Claim 13. Applicant does know that the upper limit to the density is the point where the density no longer would allow the film to be voided, the same point at which the film would no longer be considered within the scope of Claim 13. Therefore, in the originally filed specification and pending claim 13, the density is clearly defined, that is a voided film having a density greater than 0.8g/cm<sup>3</sup> and since it is voided, having an upper limit at the density where the film could no longer be considered voided. It is very clear to one skilled in the art that the claimed *voided film*, has an upper density limit where the film no longer becomes voided, because the claim clearly requires the film to be voided, and where the film is no longer voided, that film is outside the scope of Claim 13. Applicant respectfully submits that in view of the above remarks, the Examiner's rejection under 35 U.S.C. § 112, first paragraph is overcome and that Claim 13 and all claims depending therefrom are in a condition for allowance.

The Examiner rejected Claims 21-25 and 29 under 35 U.S.C. § 102(b) as being anticipated by Leatherman et al. (USPN 4,892,779). Applicant respectfully disagrees with the

In re Appln. of Helen Biddiscombe  
Serial No. 09/763,723  
Reply To Office Action Of June 7, 2005

Examiner's rejection of Claims 21-15 and 29 and in view of the remarks below, which reply to each of the Examiner's statements regarding Leatherman, submit that Claims 21-25 and 29 are in a condition for allowance. Applicant also points out to the Examiner that the following arguments and remarks are also applicable to the Examiner's obvious rejections.

The Examiner states that Leatherman anticipates a multilayer article, such as an in-mold label for labeling of polyolefin containers such as HDPE containers. The Examiner then states that the label is formed from a biaxially oriented polypropylene based voided film formed from at least one layer of polypropylene, which is a polyolefin.

Applicant respectfully submits that the Examiner has mischaracterized Leatherman. The Examiner cites Col. 13, Lns 4-7 or Col. 1, Lns 20-35 as showing a label formed from a biaxially oriented polypropylene based voided film formed from at least one layer of polypropylene, which is a polyolefin. Applicant respectfully submits that Col. 12, Ln 52 through Col. 13, Ln 36 is directed to the article or container to which the label is applied, and not the label. Therefore, the Examiner is incorrect in using Col. 13, Lns 4-7 in regards to the material from which the label is formed. Furthermore, the article to which the microporous material (label) is to be fusion bonded is specifically stated as an article formed from "substantially nonporous material" (Col. 12, Ln. 53). Leatherman continues on to state that the substantially nonporous materials are those materials which are generally impervious to the passage of liquids, gases and bacteria and on a macroscopic scale exhibit few if any pores through which matter passes (Col. 12, Lns 54-59). Leatherman then states that examples of suitable materials include substantially nonporous thermoplastic polymeric sheet or film (Col. 12, Lns. 61-67) and that examples of

In re Appln. of Helen Biddiscombe  
Serial No. 09/763,723  
Reply To Office Action Of June 7, 2005

thermoplastic polymeric materials which are suitable for use include high density polyethylene, low density polyethylene, polypropylene, ... (Col. 13, Lns. 3-7). Therefore, Col. 13, Lns. 4-7 does not support the Examiner's arguments as they do not form part of the microporous structure that the Examiner cites against the voided film of the present invention.

However, as stated by the Examiner, in Col. 1, the specification does mention using a matrix of polyethylene, essentially linear ultrahigh molecular weight polypropylene. It is important to note the use of the word matrix and that in Col 1 of Leatherman, it further states that the microporous material comprises a network of interconnecting pores communicating throughout the microporous material. These interconnecting pores are directly opposite the present invention's use of the word voided as used to describe voided films and void creating fillers.

The Examiner in the Office Action states that the term "voided" is not specifically defined in the original disclosure and is given the broadest interpretation in light of the specification, which is a film containing voids and that a microporous film also contains voids." The Examiner then states that Leatherman shows a multilayer article comprising at least one layer of microporous material and at least one layer of nonporous material.

Applicant again submits that one skilled in the art would well recognize the difference between a voided film and a microporous film. The term "voided film" is well known in the art, and therefore is well defined and needs no further definition. Furthermore, a voided film is even opposite to a microporous film by its very characteristics. One skilled in the art would immediately recognize the difference between a voided film and a microporous film, and the

In re Appln. of Helen Biddiscombe  
Serial No. 09/763,723  
Reply To Office Action Of June 7, 2005

Examiner is acting contrary to well established case law by stating that a voided film contains voids and that a microporous film also contains voids and therefore that a microporous film is a voided film and may be cited against a voided film. The Examiner is using the term voided contrary to the use of one skilled in the art and is using the present invention as a road map in hindsight to state that the microporous film in Leatherman anticipates and makes the present invention obvious.

Applicant respectfully points out that there are significant differences between a voided film and a microporous film. A microporous film, as stated in Col. 1 of Leatherman has interconnecting pores to make it porous, i.e. typically to allow the passage of gas, but not liquids. A voided film does include voids, but contrary to a microporous film, the voids of a voided film are generally not connected and therefore, would not be considered porous, a requirement for microporous films. The term "microporous" even implies a porous film just like the term voided implies a voided but not porous film.

The Examiner further needs to realize that one skilled in the art would never use Leatherman to solve "orange peel" or blistering problems. Microporous films generally do not have orange peel or blistering problems because the very nature of a microporous film is to be porous and allow the passage of gas. Therefore, blistering or orange peel, which occurs when gas becomes trapped between the article and the label, would not occur with a microporous film because the gas would pass through the pores of a microporous film. Therefore, the blistering and orange peel problems, which the present application is specifically directed to solving, are unique problems of voided films that do not generally occur with microporous films. More

In re Appln. of Helen Biddiscombe  
Serial No. 09/763,723  
Reply To Office Action Of June 7, 2005

specifically the term voided refers to a closed cell in a polymer matrix, which lowers the film's density, but does not make the film porous or permeable, but instead makes the film substantially non-porous and therefore substantially non-permeable. Therefore, Leatherman clearly does not anticipate a voided film, because the present invention is specifically directed to a voided film and not the microporous film of Leatherman. The Examiner is wrong in asserting, against the knowledge of one skilled in the art, that a microporous film, because it could be considered to have voids, and therefore is the same as a voided film.

To further support the Applicant's position that a microporous film is significantly different than a voided film, Applicant has performed a search of the USPTO and points the Examiner to United States Patent Publication No. 20050042397, entitled Biaxially-Oriented Ink Receptive Medium, and assigned to 3M, a company well experienced with films and having many people skilled in the art of films. This patent application was filed September 3, 2004, after the filing date of the present application and therefore would not be considered prior art to the present application, however, the 3M application is useful for showing the use of the terms microporous and voided and the differences between these terms. Specifically, Applicant directs the Examiner's attention to paragraphs [0102-0108]. In paragraphs [0102-0104] a microporous film is discussed. In paragraph [0108] a voided film is specifically discussed, separate and distinct from the microporous film. The specification states, although this substrate (the voided film) is highly voided internally, it is not porous enough to physically draw the ink away from the surface, as is the case for example C2 (the microporous film). Here 3M, as one skilled in the art naturally would, is clearly differentiating between a voided film and a

In re Appln. of Helen Biddiscombe  
Serial No. 09/763,723  
Reply To Office Action Of June 7, 2005

microporous film, in that, as the Applicant has stated, a microporous film has interconnecting pores making it permeable (as further supported by the Examiner's own reference – Leatherman) while a voided film is not permeable, and therefore, while it may be said in the broadest interpretation that both a microporous film and a voided film contain voids, this does not make a microporous film a voided film and one skilled in the art would understand that the terms voided and microporous, when used with films, refer to two completely different and noninterchangeable films. Therefore, Leatherman cannot anticipate the present invention which claims a voided film, because Leatherman is directed to a microporous film and does not disclose, teach, or suggest a voided film. As stated above, Applicant respectfully submits, that with the terms microporous and voided, as applied to films, being so well defined by one skilled in the art, there was no reason to further define "voided" in the specification. As is well supported by case law, if a term is very well known in the art, that term will be given the definition that one skilled in the art would understand. One skilled in the art would not mistake a voided film for a microporous film, just because a microporous film could be said to have voids (even though microporous films are generally referred to as being porous, not as having voids).

Applicant also submits the Affidavit of Dr. Karl-Heinz Kochem, dated October 5, 2005, attached to this Response as an Appendix and in support of the fact that microporous and voided films are two completely different films and not interchangeable as suggested by the Examiner. Furthermore, it is the purest form of logic that while both a microporous film and a voided film may be considered to have voids, this does not necessarily mean that a voided film is a

In re Appln. of Helen Biddiscombe  
Serial No. 09/763,723  
Reply To Office Action Of June 7, 2005

microporous film. Therefore, Applicant respectfully submits that the Examiner's rejection of Claims 21-25 and 29 under 35 U.S.C. § 102(b) is clearly overcome because Leatherman does not show a voided film, but instead shows a microporous film, and therefore, Leatherman does not include each and every limitation of the pending claims and does not anticipate any of the pending claims.

The Examiner then states that claim 21 is written in open claim language and that the label merely has to include a void creating filler selected from chalk or organic polymer, regardless of whether other void-creating fillers are also used, and that Leatherman teaches two void creating fillers, one that meets the limitations of the claim and another extra siliceous filler.

Applicant has reviewed the Leatherman patent and do not see any void creating fillers, much less the claimed void creating fillers and therefore, request clarification by the Examiner of where Leatherman teaches a void creating filler, especially one that meets the limitations of the claim. Furthermore, Applicant again respectfully submits to the Examiner that as pertaining to void creating fillers, the claim language is closed, not open as asserted by the Examiner. "When the phrase "consists of" appears in a clause of the body of a claim, rather than immediately following the preamble, it limits only the element set forth in that clause; other elements are not excluded from the claim as a whole." *Mannesmann Demag Corp v. Engineered Metal Products Co.*, 793 F.2d 1279, 230 USPQ 45 (Fed.Cir. 1986). In the present claim, the void creating filler is limited to the group *consisting of* chalk and organic polymers. Therefore, because Leatherman does not include chalk or organic void-creating fillers,

In re Appln. of Helen Biddiscombe  
Serial No. 09/763,723  
Reply To Office Action Of June 7, 2005

Leatherman does not anticipate Claim 21, and further because Leatherman does not include a void creating filler at all, Leatherman does not anticipate Claim 29.

Applicant respectfully submits to the Examiner that the Examiner needs to understand the difference between a filler and a voiding agent or void creating filler. As stated in the specification, the present invention may include fillers, such as the listed titanium dioxide, which are commonly used for color pigmentation, but this filler is not a void creating filler as claimed by the present invention in Claim 21. As claimed in the claims, it is an essential part of the invention to include void creating fillers, which does not encompass all fillers such as the titanium dioxide mentioned in the present invention. Filler is a general term used in the art for any kind of particulate material which may be added to a polyolefin film. A voiding agent or void creating filler is a filler, but a filler is not always a voiding agent. The function of the filler depends on the polymer matrix, and on the process whereby the film is made. The same particulate filler may act differently depending on its amount, location in the film and particle size. Therefore, where in one case a particular filler may be a void creating filler, in others cases, that the same filler may create pores to make the film porous, or may act as a filler for color and create no voids or pores. Therefore, the mere mention of a filler, even if it is the same filler, means nothing, unless such filler is mentioned as a void creating filler. Not all fillers are void creating fillers and Applicant respectfully submits that Leatherman does not contain the fillers required by Claim 21, much less disclose, teach or suggest the void creating filler required by Claim 29. Leatherman does not include any mention of a voiding agent explicitly or inherently and therefore, even if Leatherman used the same fillers, Leatherman does not include

In re Appln. of Helen Biddiscombe  
Serial No. 09/763,723  
Reply To Office Action Of June 7, 2005

a voiding agent or void creating filler, especially in view of the microporous film used in Leatherman, which is the opposite of a voided film.

For example, in using chalk as a voiding agent, several factors must be considered. First, chalk can only create voids in a polypropylene matrix, but not in a polyethylene matrix. It is important to note that Leatherman includes a matrix of polypropylene and polyethylene which would cause difficulty in creating voids in the film of Leatherman, even if the microporous film with its interconnecting nature could be considered a voided film. As stated in Claim 21, Applicant claims a polypropylene based voided film having a void creating filler disposed in the polypropylene homopolymer. Leatherman does not include each of these limitations and therefore does not anticipate the present invention.

Furthermore, in Leatherman, the filler mentioned is not to create "voids" (as defined by the Examiner) or "pores" (as defined by Leatherman). Instead, Leatherman clearly teaches the use of a plasticizer, which is added and extracted after calendaring, which makes the film microporous without even use of the filler. Therefore, irrespective of whether the film is voided or microporous, Leatherman, does not disclose, teach, or suggest a "void creating filler" as the filler is not the cause of the voids or pores. Therefore, Claims 21 and 29, and the claims depending therefrom are not anticipated by Leatherman, because Leatherman does not include a void creating filler.

More specifically, Applicant directs the Examiner's attention to Col. 5, Ln. 45 through Col. 8., Ln. 40 which deals with the addition of the plasticizer, extraction of the plasticizer and the residual plasticizer. More particularly, Leatherman states that microporous material may be

In re Appln. of Helen Biddiscombe  
Serial No. 09/763,723  
Reply To Office Action Of June 7, 2005

produced according to the general principles and procedure of U.S. Pat. No. 3,351,495 (Col. 6, Lns. 59-64) to Larsen, which in turn teaches an *inert* filler and a plasticizer (minimum of 30 % volume required)... where the plasticizer is extracted to impart porosity to the film. Therefore, the plasticizer creates the pores in Leatherman and Leatherman does not include a "void creating filler" as required by the claims. Therefore, Leatherman does not anticipate the pending claims.

The Examiner, in the anticipation rejection of Claims 21-25 and 29 then continues on that the microporous material is taught to be at least in the multilayer article as at least one layer and in the embodiment in which the microporous material is in more than one layer, the microporous material is the base layer and an intermediate layer, while the nonporous material is at least the outer layer.

Applicant has reviewed Leatherman and does not find support for the Examiner's assertions. A multilayer material is not used in the in-mold labeling process, and it is not a multilayer material (including the microporous material and a non porous layer), that is fusion bonded. Instead, the nonporous layer in Leatherman is the article or container, and not part of the label. Therefore, Leatherman does not include a label having a base layer and an outer layer, much less where the base layer includes a void-creating filler, and further much less where the outer layer is a heat sealable polymer. Applicant respectfully submits that the Examiner has confused the description of an article with attached label in Leatherman with only the label in the present invention. Applicant respectfully points out that the claims further include a blow molded article formed from high density polyethylene, which is in-mold labeled with a label having the claimed layers. Leatherman does not disclose, teach or suggest an article in-mold

In re Appln. of Helen Biddiscombe  
Serial No. 09/763,723  
Reply To Office Action Of June 7, 2005

labeled with a label having the layers as claimed in Claims 21 and 29. Therefore, Applicant respectfully submits that the Examiner's rejections of Claims 21-25 and 29 as being anticipated by Leatherman is overcome because Leatherman does not include each and every limitation of the claims.

The Examiner rejected Claims 2-5, 9, 13, and 15-17 under 35 U.S.C. § 103(a) as being unpatentable over Leatherman et al. The Examiner gives various reasons for rejection, and Applicant has addressed each reason below.

The Examiner states that Leatherman teaches a multilayer article, formed from a biaxially oriented polypropylene based voided film, formed from at least one layer of polypropylene, which is a polyolefin. In summary, the Examiner asserts that the multilayer article includes at least one layer of microporous material and at least one layer of nonporous material, citing col. 13, lines 45-51. The Examiner then expands these arguments regarding inherency of the density on Page 7 of the Office Action, the second to last line, through the end of the first full paragraph on Page 9.

Applicant respectfully restated the arguments above in regards to Leatherman not showing a multilayer label, and the label in Leatherman not being formed from the materials suggested by the Examiner in Col. 13.

In summary of the arguments above in regards to the anticipation rejection, Applicant restates such arguments and respectfully submit that the Examiner has mischaracterized Leatherman and state that Col. 12, Ln 52 through Col. 13, Ln 36 is directed to the article to

In re Appln. of Helen Biddiscombe  
Serial No. 09/763,723  
Reply To Office Action Of June 7, 2005

which the label is applied, and not the label. Therefore, the Examiner is incorrect in using Col. 13, Lns 4-7 in regards to the material from which the label is formed.

Furthermore, Applicant restates the arguments regarding Leatherman not showing a multilayer label as suggested by the Examiner. A multilayer material is not used in the in-mold labeling process of Leatherman, and as stated above, the label in Leatherman is not a multilayer material (including the microporous material and a non porous layer), that is fusion bonded. Instead, the nonporous layer in Leatherman is the article, and not part of the label. Therefore, Leatherman does not include a label having a base layer and an outer layer, much less where the base layer includes a void-creating filler, and further much less where the outer layer is a heat sealable polymer. Applicant respectfully submits that the Examiner has confused the description of an article with attached label in Leatherman with only the label in the present invention. Applicant respectfully points out that the claims of the present invention include a blow molded article formed from high density polyethylene, which is in-mold labeled with a label having the layers. Leatherman does not disclose, teach or suggest an article in-mold labeled with a label having the layers as claimed in Claim 13 and the Claims which depend therefrom.

In further regard to the Examiner's use of Col. 13, Lns 45-51, the multilayer article, as used in Leatherman refers to the complete article, i.e. as used in the terminology of the present invention, the blow molded article, with the label attached. As in Col 12 and 13 of Leatherman, prior to the Examiner's cited portion, all references of a nonporous material refer to the actual article, i.e. the blow-molded article in the preamble of the present invention's claims, not a layer

In re Appln. of Helen Biddiscombe  
Serial No. 09/763,723  
Reply To Office Action Of June 7, 2005

of the label. The portion cited by the Examiner only is stating that the underlying blow molded article may be formed from more than one layer of nonporous material and the label may be formed of more than one layer of microporous material. Nothing in this paragraph, discloses, teaches or suggests a multilayer label as the present invention. This interpretation is repeatedly supported throughout Leatherman where "microporous material" refers to the label and "nonporous material" refers to the underlying container or blow molded article, and the use of "article" refers to the labeled container. Therefore, as Leatherman does not disclose, teach or suggest the layer of the label as used in the present invention. Applicant respectfully submits that Claim 13 and the claims depending therefrom are in a condition for allowance.

In regards to the Examiner's density arguments, these do not supplement or overcome the deficiencies stated above. Furthermore, Applicant respectfully submits that the Examiner's arguments that the density of the nonporous material would inherently have a density of 0.9 g/cm<sup>3</sup>, would refer to the underlying container/article (or blow-molded article as used in the present invention) and Applicant would not disagree with the Examiner that the underlying container to which the label is applied could have a density greater than 0.9g/cm<sup>3</sup>. However, this does nothing to prove the density of the film, and that a voided film can have a density of 0.8 g/cm<sup>3</sup> or greater, and therefore, Applicant submits that Leatherman does not disclose, teach or suggest the present invention.

Even if microporous film could be substituted for voided film, (as asserted by the Examiner), nothing in Leatherman teaches the LABEL as having a density of greater than 0.8 g/cm<sup>3</sup>, and when Leatherman teaches the pores being at least 35 % by volume of the

In re Appln. of Helen Biddiscombe  
Serial No. 09/763,723  
Reply To Office Action Of June 7, 2005

microporous material, Applicant respectfully submits that not only does Leatherman not disclose, teach or suggest a density of  $0.8 \text{ g/cm}^3$ , but in fact teaches directly away from such a density by teaching a volume of AT LEAST 35 percent pores (see Col. 1, Lns. 50-54). Therefore, if the label was formed from a material of a density of  $0.9 \text{ g/cm}^3$ , as asserted by the Examiner, the label in Leatherman would have a density at the greatest of  $0.585 \text{ g/cm}^3$ , well under the  $0.8 \text{ g/cm}^3$  claimed in Claim 13, and therefore, Leatherman does not disclose, teach or suggest the present invention, but in fact directly teaches away from the present invention in that the pores make up at least 35% of the volume, and therefore, the density would have to be less than  $0.585 \text{ g/cm}^3$ . Furthermore, the Examiner's references to the nonporous material as part of the label, is unfounded and directly contrary to the teaching of Leatherman, as Applicant has outlined above in response to the anticipation rejection and this obvious rejection over Leatherman. Therefore, the Examiner arguments based upon different layers, and choosing layers and thickness of layers are not supported by Leatherman, and Claim 13 and the Claims depending therefrom are in a condition for allowance.

Therefore, in view of the fact that Leatherman does not disclose, teach or suggest the in-mold labeling of an article with a multilayer label, and much less does not teach use of the materials used in the layers of the present label, Applicant respectfully submits that the Examiner obvious rejection over Leatherman is overcome and Claim 13 and the claims depending therefrom are in a condition for allowance.

In rejection Claims 13 and claims 2-5, 9 and 15-17 that depend therefore, the Examiner further states that Leatherman includes a voided film, as the limitation "voided" is not

In re Appln. of Helen Biddiscombe  
Serial No. 09/763,723  
Reply To Office Action Of June 7, 2005

specifically defined in the original disclosure and is given the broadest interpretation in light of the specification, which is a film containing voids.

Applicant restates the arguments made above in response to the anticipation rejection of the claims in view of Leatherman, regarding the term voided. To avoid redundancy, Applicant refers the Examiner to those remarks. However, again, Applicant submits that there is no reason to "define" the term voided, as it has a clearly defined meaning to one skilled in the art, and therefore, the broadest definition is not, as asserted by the Examiner "a film containing voids", but instead a voided film as Applicant has shown the term is clearly used in the art, through the Affidavit, previous arguments and United States Patent Publication No. 20050042397. Case law is well established that a term is to be used as one skilled in the art would use such a term, and therefore, the Examiner can't conveniently define a term broader than its commonly accepted definition to one skilled in the art. While a microporous film could be said to include voids, a voided film could not be considered to be porous or permeable and therefore, a microporous film, which is porous or permeable is exactly the opposite of a voided film, which is of closed void structure, not porous and not permeable. A microporous film, as stated in Col. 1 of Leatherman has interconnecting pores to make it porous, i.e. typically to allow the passage of gas, but not liquids. Furthermore, there is no motivation to use Leatherman for voided films, as Leatherman teaches directly away from solving the problems of the present invention. The problems that the present invention solves (blistering and orange peeling) generally do not occur with a microporous film, because the very nature of the film is to be porous and allow the passage of gas. Therefore, blistering or orange peel, which occur when gas becomes trapped

In re Appln. of Helen Biddiscombe  
Serial No. 09/763,723  
Reply To Office Action Of June 7, 2005

between the article and the label, would generally not occur with a microporous film and not be a problem for Leatherman. Therefore, Leatherman which teaches a microporous film clearly does not disclose, teach or suggest a voided film. Therefore, Applicant respectfully submits that the Examiner's obvious rejection over Leatherman is overcome and Claim 13 and the claims depending therefrom are in a condition for allowance.

The Examiner rejected Claims 8, 12, 20, and 26-27 under 35 U.S.C. § 103(a) as being unpatentable over Leatherman et al. in view of Takagi (USPN 5,078,817). Applicant respectfully disagrees with the Examiner's rejections for the same reasons as stated above in response to the anticipation rejection in view of the Leatherman, and the obvious rejection over Leatherman, and submit that the Takagi does nothing to supplement the deficiencies of Leatherman. For the Examiner's benefit, Applicant has provided a summary below of the arguments detailed above, however Applicant refers the Examiner to the above arguments for more detail.

The Examiner states that Leatherman teaches all that is claimed in Claims 9, 13 and 21, as shown above, but fails to teach adding a hydrogenated hydrocarbon resin to the base and/or intermediate layers. The Examiner continues on that Takgi teaches that a hydrogenated hydrocarbon resins are used in the layers of shrinkage labels, in order to enable the shrinking power of the film to occur uniformly so that deformation of the label does not occur.

Applicant respectfully submits that Takgi does not supplement the deficiencies of Leatherman, in that Takgi does not disclose, teach or suggest an in-mold labeled, blow-molded article, Takgi does not disclose, teach or suggest the label being formed from a biaxially

In re Appln. of Helen Biddiscombe  
Serial No. 09/763,723  
Reply To Office Action Of June 7, 2005

oriented polypropylene film, but instead teaches monoaxially stretched film, Takgi does not disclose, teach or suggest a voided film, Takgi does not disclose, teach or suggest a shrinkage rate of at least 4%, Takgi does not disclose, teach or suggest shrinkage in both the machine and transverse directions, Takgi does not disclose, teach or suggest a base layer composed of polypropylene homopolymer, Takgi does not disclose, teach or suggest an outer layer having a density of 0.8 g/cm<sup>3</sup>, Takgi does not disclose, teach or suggest a void-creating filler, and Takgi does not disclose, teach or suggest a void-creating filler selected from the group consisting of chalk or organic polymers. Therefore, Takgi does not supplement the deficiencies of Leatherman. Applicant respectfully submits that the pending claims define over Leatherman in view of Takgi and that all of the pending claims are in a condition for allowance.

In view of the above remarks and the revised claims, Applicant submits that each of the pending claims define an invention that is patentable over the prior art. If the Examiner believes that personal communication will expedite prosecution of this application, he is invited to telephone the undersigned at (248) 433-7231.

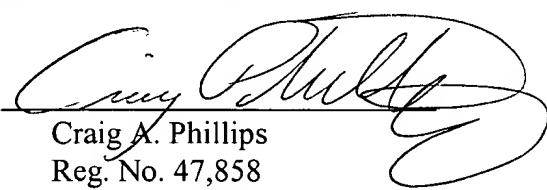
Prompt and favorable consideration of this amendment is respectfully requested.

Respectfully submitted,

Date: 10-7-05

Dickinson Wright PLLC  
1901 L Street NW, Suite 800  
Washington, D.C. 20036  
(248) 433-7231

By:

  
Craig A. Phillips  
Reg. No. 47,858  
Attorney For Applicant

CAP/  
Enclosures  
BLOOMFIELD 46613-6 720487v1